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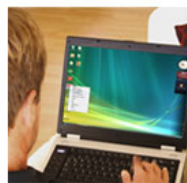
- FOXNews.com

- June 17, 2010

Online Posting of Motorcyclist's Traffic Stop Sets Off Debate on Wiretap Law

Wiretap laws are drawing scrutiny in the age of YouTube as the case of a Maryland motorcyclist, arrested for recording and posting online a traffic stop, raises questions about whether citizens have the right to record their own encounters with police.

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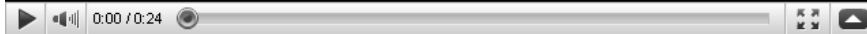
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Wiretap laws are drawing scrutiny in the age of YouTube as the case of a Maryland motorcyclist, who was arrested for recording and posting online a traffic stop, raises questions about whether citizens have the right to record their own encounters with police.

Civil liberty groups say police are abusing a statute, designed to protect people's privacy from government intrusion, by preventing citizens from recording their own activities.

But law enforcement officials say recordings of confrontations with police may violate wiretap laws that require two-party consent.

Maryland is one of 12 states that requires two-party consent, meaning all parties must agree before a recording is made if a conversation occurs where there is a "reasonable expectation of privacy."

The other states are California, Connecticut, Florida, Illinois, Massachusetts, Michigan, Montana, Nevada, New Hampshire, Pennsylvania and Washington.

The laws were created decades ago before the digital age.

"There's a clear case that they're outdated," David Rittgers, a legal policy analyst with the libertarian-leaning Cato Institute, told FoxNews.com.

The right to record police officers has been upheld by state supreme courts in New Jersey, Pennsylvania, Washington and Illinois -- although Illinois lawmakers later made it illegal to record anyone without consent.

Federal law requires only one-party consent, as do the other 38 states and the District of Columbia.

In Maryland, the issue is trickier because a 2003 consent decree with the state ACLU over racial profiling requires state troopers to record traffic stops themselves, using dashboard cams that were installed in all patrol cars. Still, that hasn't stopped police from warning cameramen about their recordings.

In a YouTube video last month, a Baltimore cop at the Preakness horse race told a cameraman that it was illegal to record several officers subduing a woman who began bleeding during the confrontation.

In the case of the motorcyclist, Anthony Graber, a Maryland Air National Guardsman, drew national attention when he posted a video in March showing plainclothes Maryland State Trooper Joseph D. Uhler with his gun drawn pulling him over on a speeding and reckless driving violation.

[Click here to view the video.](#)

After Graber, 25, posted the video, the state police charged him with violating the state's wiretap law because his helmet camera recorded the audio of the stop, which is illegal in Maryland.

Graber faces up to 16 years in prison if found guilty of all charges. A hearing is scheduled in October.

Maryland State Policeman Greg Shipley said at a news conference that the officer was acting appropriately.

"He held that gun at his side momentarily," Shipley said. "When he saw the situation was under control, he quickly put it away, never pointed at the individual and we think he acted appropriately."

Explaining the arrest under the wiretap law, Shipley said, "He had been recording this trooper audibly without his consent."

The ACLU of Maryland has come to the defense of Graber, calling the prosecution "profoundly dangerous" and seemingly intended to "intimidate people from making a record of what public officials do."

"It is hard to imagine anything more antithetical to a democracy than for the government to tell its citizens that they do not have the right to record what government officials say or do or how they behave," David Rocah, staff attorney for ACLU, said in a written statement last month.

ACLU Legal Director Deborah Jeon argues that cops performing their duties in a public place, such as an interstate highway, cannot reasonably claim that their communications are private.

"This is especially true for highway stops, since many police departments, including the Maryland State Police, record the stops themselves, thus negating any possibility that the officer would reasonably believe the conversation to be private," she said.

But the Maryland State Police say the jury is still out on that.

"That seems to be the question on everyone's mind as this case is tried," Maryland State Police spokeswoman Elena Russo told FoxNews.com.

Rittgers called the Graber case "an abuse of police power." He said that regardless of the outcome in Graber's case, the police have won.

"Even if there's no conviction in Graber's case, the deterrent that the officers wanted to have is established," he said. "People will be afraid to film police officers in these states because of the threat of prosecution."

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